should supersede section 26, that provided for by that it intended section 117 to be an express provision to the contrary within the meaning of section 26 and that it has achieved that intention.

I find myself able to reach this conclusion, because the opinion of Garcia J., who had already ruled the statements concerned to be inadmissible because they were not voluntary, was *obiter* and not necessary to his decision.

I therefore reject the argument that no confession which is made to a police officer by a person in custody is admissible unless made before a magistrate. If a confession to a police officer satisfies the requirements of section 117, it is admissible and section 26 should be regarded as nullified by section 117.

Solicitors: *Szetu & Co.*

WONG TING YONG v. PUBLIC PROSECUTOR

[A.Cr.J. (Addison J.) December 4, 1985]

[Bandar Seri Begawan – Criminal Appeal No. 12 of 1985]

Passports – Possession of passports of others – Authority to retain passports not revoked by holders – Whether appellant held passports without lawful authority – Emergency (Passports) Order, 1983, s.12(1)(a), (f) & (g).

The discovery of 5 passports in the possession of the appellant led to his being charged as follows:

"That you, on the 26th day of June 1985, about 1855 hours, in the compound of the Bandar Seri Begawan Central Police Station, in the Negara Brunei Darussalam, without lawful authority, did have in your possession the following passports (A list attached) issued for the use of other persons than yourself, to wit, to those persons as in the list, and that you thereby committed an offence contrary to section 12(1)(g) of the Emergency (Passports) Order, 1983."

The holders of these 5 passports were 2 Filipino girls and 3 Thai girls. The Magistrate found that the appellant was in possession without lawful authority of the passports of the 2 Filipino girls, neither of whom had asked him for the return of her passport. The only issue in this appeal is whether the Magistrate was correct in deciding that the appellant was in possession of the passports without lawful authority.

Held, allowing the appeal: (1) the passports in this case were voluntarily handed over to the appellant. His authority to retain those documents was never revoked. He assumed the responsibilities as custodian of the documents for and on behalf of the passport holders. His initial acquisition of the passports was not unlawful. Merely continuing to hold them did not evidence any possession by him for an unlawful purpose;

(2) the conviction was quashed and the fine, if paid, must be returned to the appellant.

Cases referred to:

(1) *R.* v. *Wuyts* [1969] 2 All E.R. 799.
(2) *Wong Pooh Yin* v. *Public Prosecutor* [1954] M.L.J. 189; [1954] 3 All E.R. 31.
(3) *Dickins* v. *Gill* [1896] 2 Q.B. 310.
(4) *R.* v. *Jura* [1954] 1 Q.B. 503.
(5) *Abdul Salam* v. *Public Prosecutor* [1955] M.L.J. 116.

CRIMINAL APPEAL.

David Clidero for the appellant.

James Chew (Deputy Public Prosecutor) for Public Prosecutor.

Cur. Adv. Vult.

Addison J.: On June 26, 1985, the appellant's motor vehicle was searched by the Police and in an envelope inside that vehicle were found five passports. This discovery led to his being charged with an offence contrary to section 12(1)(g) of the Emergency (Passports) Order, 1983.

Precisely, the charge was in these terms:

"That you, on the 26th day of June 1985, about 1855 hours, in the compound of the Bandar Seri Begawan Central Police Station, in the Negara Brunei Darussalam, without lawful authority, did have in your possession the following passports (A list attached) issued for the use of other persons than yourself, to wit, to those persons as in the list, and that you thereby committed an offence contrary to section 12(1)(g) of the Emergency (Passports) Order, 1983."

The holders of these 5 passports were two Filipino girls and three Thai girls.

The Magistrate found that the appellant was in possession without lawful authority of the passports of the two Filipino girls whose names were Miss Alicia A. Joven and Miss Gertrude O. Reyes. Their passports were in order but neither had a valid visitor's pass or a work permit.

The facts of the case showed that Miss Joven, a single woman aged 24, came to Brunei on October 28, 1984, to work as a maid for Mr. Lim Seng Kiat. She handed her passport to the appellant whom she knew to be "the representative of her employer." Her visitor's pass was last extended to Novem-

ber 11, 1984, since which time nothing had been achieved to extend that date or to obtain a work permit for her.

Quite clearly she expected the appellant to obtain all the approvals and endorsements necessary for her continued and regular stay in Brunei. She said that after she handed her passport to him she did not see it again until its discovery by the Police inside his vehicle. There is no evidence that she requested the appellant to return her passport.

Miss Reyes arrived in Brunei on April 28, 1985, and obtained an extended visitor's pass until May 12. She came to work as a maid for Mrs. Rita Wong, to whom she handed her passport. Mrs. Wong gave the passport to her husband who in turn handed it to the appellant, so that he could apply to the appropriate authorities for the necessary consents and endorsements which would enable Miss Reyes to stay and work in Brunei lawfully. Miss Reyes had not seen her passport since she handed it to Mrs. Rita Wong in May 1985.

The appellant worked as a captain in a restaurant, partly owned by Mr. Lim Seng Kiat who from time to time instructed the appellant, as his representative, to renew visit passes and work permits of those girls employed at the restaurant and others with whom Mr. Lim was somehow associated. As the learned Magistrate commented, "obviously the defendant knew a thing or two about how to go about obtaining extensions and work permits."

The appellant was unable to obtain an extension of Miss Joven's visit pass or to get her a work permit. He returned her passport to Mr. Lim's secretary telling her to give it to Mr. Lim. She, however, did not do so. Some months later she returned the passport to the appellant who continued to hold it. Thereafter the appellant went to Tokyo and nothing further was done in the matter before the passport was seized by the Police. Quite clearly he was in possession of her passport for many months without anything being done in relation to it.

Through being dilatory he failed to apply for the required extension to the visit pass and work permit for Miss Reyes. He put this down also to his trip to Tokyo. He was, he said, otherwise busily engaged.

He never viewed the Immigration Department as being like time and tide who would wait for no man.

In short then, the facts show that although the passports of Miss Joven and Miss Reyes were handed either directly or indirectly to the appellant for him to obtain visit passes and work permits which he failed to acquire, he nevertheless continued to hold on to those passports until they were seized by the authorities on June 26, 1985. Neither passport holder asked the appellant for the return of her passport.

The Trial Magistrate took the view that the appellant held Miss Joven's passport for far too long a time after he had failed to obtain an extension or work permit and that in any event, on his being handed back the passport by Mr. Lim's secretary he should have passed it to his employer for him to restore it to Miss Joven.

For this reason, the Magistrate concluded that the appellant was in possession of the passport without lawful authority. He reached the same conclusion in respect of the appellant's retention of Miss Reyes' passport. At page 39 of the record he said:

> "To my mind as long as there is a possibility of obtaining an extension and the Immigration Department grants a grace period in which to process the work permit, prosecution should not lie. This in the case of the Thai passports. There was a possibility of obtaining it.
>
> As to the Filipina passports, it is clear to my mind that in the case of Miss Joven's passport, the period was far too long gone for the defendant to have obtained the work permit, if at all it was obtained. He should have returned the passport to his employer when the secretary returned it to him even if he had to incur the anger of the employer. I do not think the defendant can say that he had lawful authority to have in his possession the passport in this instance.
>
> Similarly, in the case of Miss Reyes' passport, I find that he had not done anything immediately in respect to her passport. He thought he would attend to it after his return from Tokyo. I do not think he can take refuge under the shelter of his lackadaisical attitude. *Vigilantibus, non dormientibus lex adjuvat.*

In answer to that Latin maxim, Mr. Clidero has referred this Court to the case of *R.* v. *Wuyts*[1] the headnote of which reads in part:

> "The fact that an accused has not delivered forged banknotes to the police at the first available opportunity does not prevent him from relying on the defence of lawful authority or excuse, the question still being one for the jury."

The only issue in this appeal is whether the Magistrate was correct in deciding that the appellant was in possession of the passports without lawful authority.

The Public Prosecutor's argument in this appeal is a simple one. He maintains that "lawful authority" can only emanate from the State, or from a person representative of the State, for example from an officer in the Immigration Department or in the Police Force or from the Courts.

The prosecution alleges that the appellant had no lawful authority for being in possession of these passports because the only lawful authority he could have received would have had to have come from the State or from one of its organs and, there having been no delegation of such authority, he was guilty of the offence.

Mr. James Chiew's argument is that "lawful authority" here means in effect the alter ego of the government. When it was suggested to him that a travel agent holding the passports of several tourists would, on his argument, be guilty of the offence, he replied that in those circumstances the offences though committed, would be technical and as such would not be prosecuted.

Section 12(1)(g) of the Emergency (Passports) Order, 1983 is in these terms:

"Any person who, without lawful authority, has in his possession any passport or internal travel document issued for the use of some person other than himself shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding ten thousand dollars and to imprisonment for a term not exceeding five years."

The first thing to note is that there is no reference in section 12(1)(g) to the words "lawful excuse" or "reasonable excuse." It is an offence for a person to have possession of another's passport without lawful authority.

Section 12(1)(a) is not altogether irrelevant. That section enacts:

"Any person who forges, alters or tampers with any passport or internal travel document, or any visa or endorsement thereon, or without lawful authority uses or attempts to use, or has in his possession, any passport or internal travel document which has been so forged, altered or tampered with, shall be guilty of an offence."

That subsection deals with possession of forged or altered passports.

Section 12(1)(f) reads.

"Any person who allows any person to have possession of any passport issued for his use alone, intending or knowing that the passport may be used by any other person shall be guilty of an offence."

Thus it is an offence for a person to part with the possession of his passport to another who he knows may use that passport.

What then is the mischief behind section 12(1)(g)? Surely it must be to make criminal illegal user of the passport by the possessor who happens not to be the holder. It extends to a genuine passport which is untampered with and thus its terms are wider than those in section 12(1)(a).

There is nothing in section 12(1)(g) to indicate that knowledge on the part of the passport holder is necessary. Quite clearly it is not.

A passport is granted by the state to enable the citizen to travel and requests host countries to afford him free passage and necessary assistance. Essentially it is a travel document which the state may revoke. It remains the property of the state for if that were not the case rights of revocation in the state might be curtailed.

"Lawful authority" is not the same as "lawful excuse." A person may be in possession of an item without lawful authority and yet have a lawful excuse for possessing it. That was seen to exist in the case decided by the Privy Council of *Wong Pooh Yin* v. *Public Prosecutor*[2] where a terrorist was held to have a lawful excuse for possessing a firearm where his possession was for the purpose of surrendering it to the authorities in pursuance of appeals made by the state that he should do so. His original possession of the firearm was without lawful authority and remained such throughout. He simply had a lawful excuse for possessing it.

This point is made clear in the judgment of Lord Macdermott (at [1954] M.L.J. 193) where he said:

"Their Lordships cannot, therefore, regard this submission as supported by authority. Nor are they aware of any general principle of law which would be capable of sustaining it. Indeed, it appears to them that the submission runs against the implications of the regulation. As a general proposition it appears to confuse 'lawful excuse' and 'lawful authority.' But, as already observed, these expressions raise distinct issues and the question here is not necessarily determined by the absence of 'lawful authority.' It is still whether, without having 'lawful authority', the appellant had yet a "lawful excuse."

While the evidence as to the contents of the government pamphlets was meagre their Lordships are of opinion that the testimony of the appellant, if accepted, went far enough to justify a finding that he was carrying the revolver on the occasion charged in the course of complying with the government's request, and because he wanted, and was

waiting, to surrender with it to the police when they arrived, and had actually tendered it to the Temiars to whom he had made his offer of surrender. In the light of the views already expressed in dealing with the points made against the appellant, their Lordships are unable to resist the conclusion that such a finding would have warranted a verdict of 'lawful excuse' and they are, accordingly, of opinion that that issue ought to have been left to the assessors."

In that case, the Board considered the earlier case of *Dickins* v. *Gill*[3] and pointed out that in that case the initial acquisition of possession of the die by the defendant therein was unlawful. Their Lordships in *Wong Pooh Yin* v. *Public Prosecutor* did not regard *Dickins'* case as an authority for the proposition that an unlawful acquisition *ab initio* precluded a lawful excuse being found to arise later. What Lord Macdermott said was that a lawful excuse could arise even though the initial acquisition was unlawful.

We are not concerned here with "lawful excuse." What we are concerned with in this appeal is with the words "lawful authority."

In my judgment one must, when seeking to define this term, have regard to the object of the legislation. Such clearly was the approach of the Court of Appeal in the case of *R.* v. *Jura*[4] where Lord Goddard C.J. decided that the appellant could not be held to have committed an offence contrary to section 1(1) of the Prevention of Crime Act 1953 of carrying an offensive weapon without lawful authority or reasonable excuse.

In that case the appellant, at a fair-ground, paid for the use of a rifle at a side show where a target was provided. Instead of shooting at the target he shot a woman in the fair-ground. The trial judge directed the jury that the defendant's possession of the rifle became unlawful if he turned the rifle deliberately on the woman. That direction was held by their Lordships in the appeal to be wrong in law.

The reason for that decision is set out on page 506. There, Lord Goddard C.J. said:

"The appellant was not carrying this rifle without lawful excuse because he was at a shooting gallery where for the payment of a few pence people can amuse themselves by firing at a target. He was carrying the rifle for that purpose, so he had an obvious excuse for carrying it. It was his use of the rifle which was unlawful, and for which he might have been convicted of a felony. If a person having a rifle in his hand for a lawful purpose suddenly uses the rifle for an unlawful purpose, the Offences against the Person Act, 1861, provides appropriate punishment. The Act of 1963 is meant to deal with a person who goes out with an offensive weapon, it may be a cosh or a knife, without any reasonable excuse. If the judge's direction were right it would mean that anybody in possession of a shotgun going to a shooting party who used the gun for an unlawful purpose would be guilty of an offence under this Act. He would be guilty of an offence under the Offences Against the Person Act, 1861. In my opinion, there is no evidence that the appellant was carrying the weapon without reasonable excuse, and, therefore, the judge ought to have directed the jury to acquit on the fourth count."

I do not see that case as an authority for the proposition that an initial lawful possession cannot later become unlawful.

In my judgment the appellant's initial lawful possession can be transposed into an unlawful possession but for this to happen the prosecution must show unequivocal evidence of misuser of the passport or an assumption of a right inconsistent with the right of the passport holder. Such would arise if the appellant had appropriated the passport to his own use but there was no evidence of this. If he had refused to return it to the holder subsequent to her request that too may well have converted his possession into an unlawful one or one without lawful authority. Again, holding on to a passport for an unreasonable length of time, after a request is made for its return, could be capable of amounting to a possession without lawful authority.

In this case, however, there was never any request for the return of a passport.

The evidence shows that the passports were voluntarily handed over to the defendant for him to obtain extensions of visitors' passes and working permits. His authority to hold on to them for that purpose was never revoked.

Mr. Clidero has directed my attention in this appeal to the case of *Abdul Salam* v. *Public Prosecutor*[5] which concerned regulation 15(d) of the Ration Documents Regulation. That regulation provided that "a person shall not retain any such ration document when he has no right to retain it or fail to comply with any directions with regard thereto."

Thomson J. held, *inter alia,* that bare retention of ration cards by a retailer with the knowledge and consent of the holders was no offence under regulation 15(d). He pointed out that the person to whom the ration document was issued was not prohibited under the regulations from entrusting its custody to another person.

The legislation there was wider and more specific than that under the Emergency (Passports) Order 1983.

There is no law which prevents a passport holder from handing over his passport to another for that person to act as his agent to carry out some act which the person himself could legitimately perform or to retain it for and on behalf of the holder for whatever period the holder thinks fit.

The evidence shows that the passports in this case were voluntarily handed over to the appellant. His authority to retain those documents was never revoked. He assumed the responsibilities as custodian of the documents for and on behalf of the passport holders. His initial acquisition of the passports was not unlawful. Merely continuing to hold them did not evidence any possession by him for an unlawful purpose.

For these reasons, this Court is of the opinion that the conviction in this case was wrongly entered and the appeal must be allowed. Accordingly, it quashes the conviction and directs that the fine, if paid, is to be returned to the appellant.

Appeal allowed.

Solicitors: *David Clidero & Co.*

LITA MADDOX v. CALITO C. GUINTO & ANOR.

[A.C.J. (Hooper J.) June 14, 1986]

[Bandar Seri Begawan – Civil Suit No. 245 of 1985]

Damages – Fatal accident – Lost years – Free balance – Deduction of personal expenses – Lacking information – Quantum of damages – Law Reform (Miscellaneous Provisions) Act, 1934 – Application of Laws Act (Cap. 2).

The plaintiff is the sister and administratrix of the estate of the deceased, a 27-year-old electrician who died on September 6, 1982, when he was a passenger in a motorcar driven by the 1st defendant as servant or agent of the 2nd defendant. She filed this action on July 25, 1983, for the benefit of the estate. Loss of expectation of life and funeral expenses had been agreed. The sole issue for determination is what is recoverable in respect of the lost years having regard to the assessment of the free balance. The total annual gross earnings of the deceased at the time of his death were about $15,420. Had he been alive at the time of trial, his gross annual earnings would be $20,250. The learned trial judge took the median figure of $17,835 as the multiplicand for the pre-trial earnings. As to post-trial earnings, the deceased would be expected to earn some $3,000 per month as an electrical supervisor; total gross annual earnings would be $41,640. The judge considered appropriate a multiplier of 16. The plaintiff forbade enquiries in respect of the money remitted by the deceased to the Philippines. There is thus very little evidence as to what the deceased's actual living expenses were.

Held: (1) the personal expenses of the deceased should be fixed at 75%;

(2) the pre-trial loss should be calculated at $17,835 x 3.75 x 25% = $16,720.31;

(3) the post-trial loss should be calculated at $41,640 x 12.25 x 25% = $127,522.50;

(4) judgment for the plaintiff in the total sum of $159,543 (rounded), with costs. Question of interest reserved for hearing.

Cases referred to:

(1) *Gammell* v. *Wilson* [1981] 1 All E.R. 578, 593.
(2) *The Personal Representatives of the Estate of Wong Sai-Chuen, deceased* v. *Tam Mei-Chuen & Ors.* [1983] H.K.L.R. 331 C.A.
(3) *Liew Choon Kin* v. *Ang Bee Tee* (unreported) – Brunei Court of Appeal Civil Appeal No. 1 of 1983.
(4) *Tiong Ing Chiong* v. *Giovanni Vinetti* [1984] 2 M.L.J. 169, 179.
(5) *Ang Bee Tee* v. *Liew Choon Kin* (unreported).
(6) *White* v. *London Transport Executive* [1982] 2 W.L.R. 791.
(7) *Adsett* v. *West* [1983] 2 All E.R. 985.
(8) *Harris* v. *Empress Motors* [1984] 1 W.L.R. 212.

CIVIL SUIT.

T.C. Chan for the plaintiff.

David Clidero for the defendants.

Joseph Linus, amicus curiae.

Cur. Adv. Vult.

Hooper J.: The plaintiff is the sister and administratrix of the estate of Jaime Tipton Galdones, deceased, and she brings this action for the benefit of the said estate. Letters of administration were granted to the plaintiff in the Court of the Probate Officer of Bandar Seri Begawan on June 12, 1984. The suit was commenced on July 25, 1985.

The cause of action arose on September 6, 1982, when the deceased was a passenger in a motorcar driven by the 1st defendant who was acting as the servant or agent of the 2nd defendant.

Interlocutory judgment has been entered against the 2nd defendant, and the matter comes before me to assess the quantum of damages, which should be